

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUCHELL CINQUE MAGEE,
Petitioner,
v.
J. SOTO,
Respondent.

Case No. [15-cv-5234-TEH](#)

ORDER OF DISMISSAL

Ruchell Cinque Magee, a prisoner at California State Prison - Lancaster and a frequent litigant in this Court, has filed a second or successive pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. He seeks to proceed in forma pauperis under 28 U.S.C. § 1915. Docket No. 5. Petitioner has also filed a motion to disqualify the undersigned judge. Docket No. 2.

I

This instant petition challenges Petitioner's 1975 conviction and life sentence from the Santa Clara Superior Court. His first federal Petition challenging this conviction and sentence was denied on May 10, 1995. See Magee v. Marshall, No. C-93-3637 DLJ, Docket No. 42. Petitioner has since filed many federal habeas and civil rights actions attacking the same conviction. On August 19, 2011, this Court dismissed as successive his most recently filed habeas petition challenging this conviction. See Magee v. Smith, No. C-11-2810 TEH, Docket

No. 6.

A second or successive petition may not be filed in this Court unless Petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this Court to consider the petition. See 28 U.S.C. § 2254(b)(3)(A). Petitioner has not obtained such an order from the Ninth Circuit. Accordingly, this Petition is DISMISSED without prejudice to refiling if Petitioner obtains the requisite Order.

II

For the foregoing reasons, Petitioner's petition for writ of habeas corpus is DISMISSED without prejudice to refiling if Petitioner obtains the requisite Order from the Ninth Circuit. Petitioner's motion to disqualify the undersigned is DENIED as frivolous and meritless.¹ Docket No. 2. Petitioner's motion to proceed in forma pauperis is GRANTED. Docket No. 5. Because reasonable jurists would not find the result here debatable, a certificate of appealability ("COA") is DENIED. See Slack v. McDaniel, 529 U.S. 473, 484-85 (2000) (standard for COA). The clerk is directed to terminate all pending motions as moot and close the file.

IT IS SO ORDERED.

Dated: 12/08/2015


THELTON E. HENDERSON
United States District Judge

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¹ A majority of Petitioner's cases seek to disqualify the presiding judge. Petitioner recently filed a case and sought to disqualify all judge in the Central District of California. See Magee v. Soto, No. C-15-3289 TEH.